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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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LAVERY, C. J., dissenting in part. I concur with parts I B, II and III of the majority opinion, affirming the judgments of the trial court. Because, in my view, the present case is indistinguishable from this court's decision in *State* v. *Aleksiewicz*, 20 Conn. App. 643, 569 A.2d 567 (1990), I respectfully dissent from the conclusion in part I A that the evidence was sufficient to find the defendants, Clifton E. Kennedy and Albert Lopez, guilty of robbery in the first degree.

To be guilty of robbery in the first degree under General Statutes § 53a-134 (a) (4), a defendant must either display or threaten the use of what he represents by his words or conduct to be a firearm.[1] As that requirement is an objective one; *State* v. *Aleksiewicz*, supra, 20 Conn. App. 648; this court's focus properly is on the representation made by the defendants, rather than the victim's perception thereof.

I believe the present case falls squarely within this court's holding in *Aleksiewicz*. In that case, we observed that "[t]he only evidence . . . that the defendant threatened the use of what he represented by word or conduct to be a firearm was the testimony of one of the victims that the assailant held one hand flat against his body, inside his shirt, vest or jacket, and that he said, 'Give me that money or you're dead.' This testimony does not definitely establish the firearm element of this crime because no gun was shown and no specific indication was given, by either the defendant's words or actions, that he had in his possession or would use *specifically a gun* to accomplish his threat." (Emphasis in original.) Id., 647. In the present case, the only evidence the defendants threatened the use of what was represented by word or conduct to be a firearm was the testimony of the victim that Kennedy ordered her to "give me your money or I'll do you," and, "Do not turn around or I'll do you." That testimony is likewise deficient to establish the firearm element.

The majority reasons that the present factual scenario more closely resembles *State* v. *St. Pierre*, 58 Conn. App. 284, 752 A.2d 86, cert. denied, 254 Conn. 916, 759 A.2d 508 (2000). I disagree. In *St. Pierre*, the defendant announced that " '[t]his is a holdup' " and then "gestured by raising his hand inside his jacket from beneath the counter to counter level while at all times keeping his hand and wrist covered by his jacket." Id., 286. At trial, the victim testified that he presumed that the defendant was holding a weapon under his jacket *due to that gesture*. Id., 289. We therefore concluded that the combination of "the defendant's words and the upward motion of his arm in his jacket . . . may properly have been considered . . . consistent with the representation and threatened use of a firearm." (Internal quota-

tion marks omitted.) Id.

Aleksiewicz, however, involved no such gesture. Indeed, we specifically distinguished two New York decisions relied on by the state by explaining that the case involved no testimony that the defendant either (1) held his hand in his pocket in a manner meant to convey the impression that he had a gun or (2) placed his hand inside his vest as if he had a gun. *State* v. *Aleksiewicz*, supra, 20 Conn. App. 649. No such testimony was provided in the present case. Consequently, *St. Pierre* is inapposite.

In *Aleksiewicz*, the defendant stated, '' 'Give me that money or you're dead.' '' Id., 647. That statement was accompanied by no gesture indicating that the defendant possessed a firearm. In the present case, Kennedy stated, ''[G]ive me your money or I'll do you,'' and, ''Do not turn around or I'll do you.'' He made no gesture indicating that he possessed a firearm. Accordingly, I would conclude that insufficient evidence was presented on a necessary element of the crime of robbery in the first degree. Because on the facts of this case, the jury necessarily would have found the defendants guilty of the lesser charge of robbery in the third degree in violation of General Statutes § 53a-136, had it considered that charge; see *State* v. *Nicholson*, 71 Conn. App. 585, 592, 803 A.2d 391, cert. denied, 261 Conn. 941, 808 A.2d 1134 (2002), cert. denied, U.S. , 125 S. Ct. 1327, 161 L. Ed. 2d 134 (2005); I would remand the case with direction to render judgments of conviction of robbery in the third degree as to each defendant.

[1] At trial, the victim testified that she never saw a firearm.